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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1444.

THE UNITED STATES, APPELLANT,

vs.

JAMES K. KELLY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED OCTOBER 17, 1890.

SUPREME COURT OF THE UNITED STATES.

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THE UNITED STATES, APPELLANT,

vs.

JAMES K. KELLY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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of only in the following manner, that is to say, when the governor of the State should certify to the Secretary of the Interior that ten co-terminous miles of said road were completed then a quantity of land granted by the act, not exceeding thirty sections, might be sold, and so on from time to time until said road should be completed, and if the road was not completed within five years no further sales should be made and the lands remaining unsold should revert to the United States, and also that the surveyor-general of the district of Oregon should cause the lands granted by the act to be surveyed at the earliest practicable period after the said State should have enacted the necessary legislation to carry the said act of Congress into effect.

II. And your orator further shows to your honors that on the 20th day of October, A. D. 1868, the legislative assembly of the State of Oregon passed, and the governor approved, an act entitled "An act dedicating certain lands to Dalles Military Road Company," which act, after setting forth the act of Congress aforesaid, granted to Dalles Military Road Company all lands, rights of way, rights, privileges, and immunities granted or pledged to the State of Oregon by said act of Congress aforesaid for the purpose of aiding said Dalles Military Road Company in constructing the road mentioned and described in said act of Congress aforesaid and upon the conditions and immunities therein prescribed; and further that the said act of the said legislative assembly granted and pledged to the said Dalles Military Road Company all moneys, lands, rights, privileges, and immunities which might thereafter be granted to the State of Oregon to aid in the construction of said road for the purposes and upon the conditions mentioned in said act of Congress or which might be mentioned in any further grant of money or land to aid in constructing said road; and said act of the legislative assembly of the State of Oregon authorized
4 the said Dalles Military Road Company to locate, subject to the approval of the governor of the State of Oregon, the land within the ten-mile limit prescribed by said act of Congress aforesaid, in lieu of lands reserved to or disposed of by the United States and lying and being within the limits of the grant as described in the first section of the act of Congress aforesaid.

III. And your orator further shows to your honors that the State of Oregon never at any time passed any laws whatsoever for the special purpose of carrying the act of Congress aforesaid into effect, but long before the passage and approval of said act of Congress and on the 14th day of October, A. D. 1862, the legislative assembly of the State of Oregon passed an act entitled "An act providing for private incorporations and the appropriation of private property therefor," which was approved by the governor of Oregon on said day last aforesaid, which act provided, among other things, that any road, other than a railway, constructed by a corporation formed under the said law, should be cleared of standing timber for thirty feet in width, that said road should have a track in the center not less than sixteen feet in width finished and kept in good traveling condition except when the cut of said road is six feet or more deep on either side, in which case said road need not be more than ten feet wide, with turnouts of sixteen feet in width for every quarter of a mile of said narrow track. And said act of the legislative assembly of Oregon last aforesaid also provided that all streams or other waters upon the line of

such roads should be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams, or other water, or if such stream or other water form the boundary between two counties, then the county court of either of said counties might authorize the corporation to place a ferry boat upon such stream or other water, to be kept and run for such toll as the county court might prescribe, and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court might authorize such corporation to connect their road with a ferry, at the date of said act or thereafter established over such stream or other water under the general statutes in relation to ferries, and that said provisions of said act of the legislative assembly of the State of Oregon last aforesaid, have been in force at all times since the 14th day of October, 1862 and still remain in force.

IV. And your orator further shows to your honors that The Dalles Military Road Company is a private corporation purporting to have been incorporated on the 30th day of March, A. D. 1868, under and by virtue of the general laws of the State of Oregon providing for private incorporations and the appropriation of private property therefor. That the enterprise and business in which the said corporation proposed to engage was the location and construction of a clay road from Dalles City, in the county of Wasco, Oregon, by way of Camp Watson and Canyon City, to a point on Snake River opposite Fort Boisé, in Idaho Territory, about two miles below the mouth of Owyhee River. That James K. Kelly, N. H. Gates and Orlando Humason were the incorporators thereof.

That on the 11th day of January, A. D. 1871, The Dalles Military Wagon Road Company, by Orlando Humason, Victor Trevitt, O. S. Savage, O. W. Weaver, and B. W. Mitchell, the then directors thereof, in pursuance of the unanimous vote of the stockholders thereof made and filed supplementary articles of incorporation that said supplementary articles of incorporation contained but one article which is as follows:

"The enterprise and business in which the said corporation proposes to engage, in addition to the location and construction of a clay road as provided in the original articles of incorporation, is to accept and receive any and all grants of land and other things of value from the United States and the State of Oregon, and to sell and convey, and to purchase, and to hold land and other property which the directors of said corporation may deem necessary and convenient for the interest thereof; and to engage any in business incident to and connected with receiving any such grant, and in selling, conveying, purchasing, and holding any land or property that may come into the possession of said company, also to establish and keep a toll road on any part of the road belonging to said company."

That said private corporation is still in being, and that the officers thereof are James K. Kelly, president, and C. N. Thornbury, secretary.

V. And your orator further shows to your honors that on the first day of January, A. D. 1869, and on divers other days between said day and the 23d day of June, 1869, the officers, stockholders and agents of The Dalles Military Road Company and other persons acting in their interest and in the interest of said company, falsely and fraudulently represented to George L. Woods, then the governor of Oregon, that said road had been constructed as by law required; they the said officers, stockholders, agents,

and representatives and other persons aforesaid, then and there well knowing that said representations were false, and that the said road had not been constructed in any respect according to law or at all; that they and each of them made the said false and fraudulent representation for the sole and only purpose of fraudulently procuring from the said George L. Woods, as governor of the State of Oregon, a certificate declaring that the said road had been constructed in accordance with the act of Congress aforesaid approved February 25, 1867, and of the act of the legislative assembly aforesaid approved February 20, A. D. 1868.

That the said George L. Woods, then governor of Oregon, in consequence of said false and fraudulent representations made as aforesaid by the persons aforesaid, made and issued the following certificate:

EXECUTIVE OFFICE,
Salem, Oregon, June 23, 1869.

I, George L. Woods, governor of the State of Oregon, do hereby certify that this plat or map of The Dalles Military Road has been duly filed in my office by The Dalles Military Road Company, and shows, in connection with the public surveys, as far as said public surveys are completed, the location of the line of route as actually surveyed, and upon which their road is constructed in accordance with the requirements of an act of Congress approved February 25, 1867, entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon-road from Dalles City, on the Columbia River, to Fort Boisé, on Snake River," and with the act of the legislative assembly of the State of Oregon, approved October 20, 1868, entitled "An act donating certain lands to Dalles Military Road Company." I further certify that I have made a careful examination of said road since its completion, and that the same is built in all respects as required by the said above-recited acts, and that said road is accepted.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Oregon.

Done at Salem, Oregon, June 23, 1869.

GEO. L. WOODS.

Attest.
[SEAL.] SAMUEL E. MAY,
Secretary of State.

6 VI. And your orator further shows to your honors that it was not and is not true that the Dalles Military Road Company had at any time whatsoever constructed, or caused to be constructed, a road upon any line of route located or surveyed by said company or by any other corporation, person or persons, anywhere within the limits of the grant of land provided for in the act of Congress aforesaid, or at all, and this the said George L. Woods, governor aforesaid, then and there well knew, and that it was not and is not true that the said governor made a careful, or any, examination of any road constructed or owned by the Dalles Military Road Company.

VII. And your orator further shows to your honors that said certificate was procured by the said Dalles Military Road Company by and through the false and fraudulent representations aforesaid by the officers, stock-

holders, agents, and persons aforesaid, in order to enable it falsely and fraudulently to obtain possession and control of the lands lying within the limits of the grant of land provided for in the act of Congress aforesaid, and that the acceptance of said pretended road by the governor aforesaid was a fraud upon the United States of America.

VIII. And your orator further shows to your honors that the said road never was built, graded, bridged, cleared, or constructed either in whole or in part so as to be a public highway, or so as to permit of the transportation of any property, troops, or mails of the United States over the same, and was not and never has been maintained as a public highway, by either or any of the defendants herein, or any person or persons claiming any interest in the lands embraced within the limits provided for by the said act of Congress.

IX. And your orator further shows to your honors that notwithstanding the provisions of the act of Congress declaring that the lands granted thereby should be exclusively applied to the construction of the road and to no other purpose, neither the said lands nor the proceeds thereof have ever been exclusively, or at all, applied to the construction of the road or any part thereof, or to the construction of any bridges thereon, or the establishment of any ferries on any streams along the line of the road or any part thereof.

X. And your orator further shows to your honors that the lands granted by the said act of Congress were not and have not been disposed of by the State of Oregon, or by the legislative assembly thereof, for the purposes expressed in said act of Congress or any thereof.

XI. And your orator further shows to your honors that on the eighteenth day of June, A. D. 1874, the Congress of the United States passed and the President duly approved an act which, after reciting that certain lands had theretofore by acts of Congress been granted to the State of Oregon to aid in the construction of certain military wagon roads in said State, and that there was no existing law providing for the issuing of formal patents for said lands, provided as follows:

"That in all cases when the roads, in aid of the construction of which said lands were granted, are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall, by public act, have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon the payment of the necessary expenses thereof: Provided, That this shall not be construed to revive any land grant already expired, nor to create any new rights of any kind, except to provide for issuing patents for lands to which the State is already entitled."

7 XII. And your orator further shows to your honors; that on the 3 day of December, 1870, the Dalles Military Road Company executed and delivered to the defendant, James K. Kelly, a deed purporting to convey to him section nineteen, the east half of the east half of section seventeen, and the west half of section seventeen, all in township two south, range seventeen east, of the Willamette meridian, containing 1,120 acres, situate in Wasco County, Oregon, which deed is recorded on

page 438, Volume D, of the record of deeds in Wasco County, Oregon, a copy of which is hereto annexed and made part of this bill of complaint.

That on the 26 day of July, 1872, the Dalles Military Road Company executed and delivered to the defendant, James K. Kelly, a deed purporting to convey to him section twenty-nine, township two south, range seventeen east, of the Willamette meridian, containing 640 acres, situate in Wasco County, Oregon, which deed is recorded on page 631, in Volume D, of the record of deeds in Wasco County, Oregon, a copy of which is hereto annexed and made part of this bill of complaint.

That the lands described in and by said deeds so made and delivered to the defendant, James K. Kelly, are part and parcel of the lands granted by the act of Congress first hereinbefore pleaded.

That the defendant, James K. Kelly, grantee in said deeds, entered into possession of said lands under the same, and claims to own and hold said lands adversely to the United States.

XIII. And your orator further shows to your honors that the defendant, James K. Kelly, at the time of the execution and delivery of
8 the deeds aforesaid, and at the time of the accruing of his pretended interests in said lands in said deeds described, had full knowledge and notice that the road provided for by the act of Congress first aforesaid had not at any time been constructed and maintained as required by said act of Congress and by the laws of the State of Oregon, so as to be in any sense whatsoever a public highway, or so that it could be used by the United States or by any of the citizens or residents thereof as a public highway, or so that the United States could transport its property, troops, or mails over the same, and also had full knowledge that no grades had been established or constructed upon said road or any part thereof; that no clearing had been done on any part thereof, no bridges built over any streams on the line thereof, no cuts made, and no turnouts constructed anywhere on said line of road by the Dalles Military Road Company or by any of the grantors or grantees mentioned and described in any of said deeds aforesaid, and that no ferries had been built or maintained over any streams on the line of said road, and had full knowledge that said road was not begun nor completed within five years from the date of the passage of the act of Congress first aforesaid, and that it never had been begun, constructed, or maintained, and that the defendant well knew that the statements made in the certificate of the governor of Oregon, hereinbefore set forth, were false; that the governor did not at any time whatsoever examine the road referred to in the said certificate; and that the said certificate had been procured by false and fraudulent representations as aforesaid.

Prayer.

Your orator therefore prays that the certificate described in this
9 bill of complaint be declared fraudulent and void; that the deeds described in this bill of complaint be declared fraudulent and void; and the lands therein described be restored to the public domain; that the United States have such other and further relief as to equity seemeth meet; that the United States writ of subpœna may issue requiring the defendants

to appear in this honorable court under certain pains and penalties therein prescribed and answer the foregoing bill of complaint, and that the defendants pay the costs, expenses, and disbursements of this suit.

O. W. CHAPMAN,
Acting Attorney-General.
LEWIS L. MCARTHUR,
U. S. Attorney for Oregon.
WILLIAM CAREY JOHNSON,
Special Assistant U. S. Attorney.

10 *The Dalles Military Road Company to James K. Kelly.*

[Deed, filed July 10, 1871.]

[$1.50 revenue stamp, cancelled.]

This indenture, made this 3 day of December, A. D. eighteen hundred and seventy, between the Dalles Military Road Company, of the first part, and James Kelly, party of the second part, witnesseth that the said party of the first part for and in consideration of the sum of fourteen hundred dollars to it paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and by these does grant, bargain, sell, convey, and confirm unto the said part of the second part, and to heirs and forever, the following described tract of land situated in Wasco County, State of Oregon, to wit: Section nineteen and the east half of east half of sec. seventeen, and west half of sec. seventeen, all in township two, south range 17 east, W. M., containing 1,120 acres, together with the appurtenances thereunto belonging, to have and to hold the above described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever; and the said party of the first hereby covenants that it will warrant and defend the title to the said described premises to the said party of the second part, his heirs and assigns, against the lawful claims of all persons.

In witness whereof the said party of the first part has hereunto caused its corporate seal to be affixed, and these presents to be subscribed by its president.

DALLES MILITARY ROAD CO., [SEAL]
By O. HUMASON, *Prest.*

Signed, sealed, and delivered in presence of—
O. W. WEAVER,
A. HOLLAND.

11 STATE OF OREGON, *County of Wasco, ss:*

On this 3 day of September, A. D. 1870, before me personally came O. Humason, president of the Dalles Military Road Company, to me personally known to be the individual whose name is subscribed to the foregoing instrument as the president of the Dalles Military Road Company, and acknowledged to me that he executed the same as president of and in behalf of said company as its free act and deed, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL.]

A. HOLLAND,
County Clerk.

12 STATE OF OREGON, *County of Wasco, ss:*

I, Geo. H. Thompson, county clerk in and for Wasco County, State of Oregon, and ex-officio clerk of the county court, do hereby certify that I have carefully compared the foregoing with the original deed from Dalles Military Road Company to James K. Kelly, dated Dec. 3, 1870, as the same now appears of record at p. 438, Vol. D, records of deeds for said Wasco County, in my office and custody, and that it is a true and correct transcript therefrom and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 28 day Aug., A. D. 1889.

[SEAL.] GEO. H. THOMPSON, *Clerk.*
By J. M. HUNTINGTON, *Deputy.*

13 *Dalles Military Road Company to James K. Kelly.*

[Filed September 7, 1872.]

[U. S. Revenue stamp, 50c., cancelled.]

This indenture, made the 26 day of July, A. D. eighteen hundred and seventy-two, between the Dalles Military Road Company of the first part and James K. Kelley, party of the second part, witness that the said party of the first part, for and in consideration of eight hundred dollars, to it paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, the following described tract of land, situate in *in* Wasco County, State of Oregon, to wit: Section twenty-nine, in township two south, of range seventeen east, Willamette meridian, containing six hundred and forty acres, together with the appurtenances thereunto belonging; to have and to hold the above-described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part hereby covenants that it will warrant and defend the title to the said described premises to the said party of the second part, his heirs and assigns, against the lawful claims of all persons.

In witness whereof the said party of the first part has hereunto caused its corporate seal to be affixed, and these presents to be subscribed by its president.

[SEAL.] O. S. SAVAGE, *President D. M. R. Co.*

Signed, sealed, and delivered in presence of—
JOHN M. MARDEN,
JOHN Y. TODD.

14 STATE OF OREGON, *County of Wasco, ss:*

On this 3 day of Sept., A. D. 1872, before me personally came O. S. Savage, president of the Dalles Military Road Company to me personally known to be the individual whose name is subscribed to the foregoing instrument as the president of the Dalles Military Road Company,

and acknowledged to me that he executed the same as president of and in behalf of said as its free act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[L. S.] A. HOLLAND,
County Clerk.

15 STATE OF OREGON, *County of Wasco, ss:*

I, Geo. H. Thompson, county clerk in and for Wasco County, State of Oregon, and ex-officio clerk of the county court, do hereby certify that I have carefully compared the foregoing with the original deed from Dalles Military Road Company to James K. Kelly, dated July 26, 1872, as the same now appears of record at p. 631, Vol. D, records of deeds for said Wasco County, in my office and custody, and that it is a true and correct transcript therefrom, and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 28 day of Aug., A. D. 1889.

GEO. H. THOMPSON, *Clerk.*
[SEAL.] By J. M. HUNTINGTON, *Deputy.*

(Endorsed:) Filed August 29, 1889.

16 And afterwards, to wit, on the 29 day of August, 1888, there was issued out of said court a subpœna ad respondendum, in words and figures as follows, to wit:

17 *Return of civil process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 31 day of Aug., 1889, at Portland, Or., Multnomah County, in said district, I duly served the within summons upon the therein-named James K. Kelly, and by delivering to him personally a true copy of said summons, duly certified to by me as U. S. marshal, together with a copy of the in the within-entitled suit, duly certified to by the clerk of the U. S. circuit court for said district.

JOHN MYERS,
United States Marshal.
By C. N. WAIT,
Deputy.

18 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,
vs.
JAMES K. KELLY, DEFENDANT. } No. 1630 in equity.

Subpœna ad respondendum.

The President of the United States of America to James K. Kelly, greeting:

You and each of you are hereby commanded that you be and appear in said circuit court of the United States, at the court-room thereof, in the

city of Portland, in said district, on the first Monday of October next, which will be the 7 day of October, A. D. 1889, to answer the exigency of a bill of complaint exhibited and filed against you in our said court, wherein the United States is complainant and you are defendant, and further to do and receive what our said circuit court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said district, or your deputy, to make due service of this our writ of subpœna, and to have then and there the same.

Hereof fail not.

Witness the Honorable Melville W. Fuller, Chief-Justice of the Supreme Court of the United States, and the seal of our said circuit court, affixed at Portland, in said district, this 29 day of August, in the year of our Lord one thousand eight hundred and 89, and of the Independence of the United States the one hundred and ——

[SEAL.]

R. H. LAMSON,
Clerk.

By R. B. LAMSON,
Deputy Clerk.

Memorandum pursuant to equity rule No. 12 of the Supreme Court of the United States:

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken pro confesso.

(Indorsed:) No. 1630. In the circuit court of the United States for the district of Oregon. In equity. The United States vs. James K. Kelly. Subpœna ad respondendum. Returned and filed September 17, 1889. R. H. Lamson, clerk; by D. W. Stevens, deputy clerk.

19 And afterwards, to wit, on the 12 day of Sept., 1889, there was duly filed in said court exceptions to bill in words and figures as follows, to wit:

20 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, PLAINTIFF,
vs.
JAMES K. KELLY, DEFENDANT.

Exceptions taken by James K. Kelly, defendant, to the bill of complaint filed against him in the above-entitled cause by the United States, plaintiff.

This defendant excepts to all the parts of said bill of said complaint herein described as being matter not material to said suit and which can not aid the plaintiff in obtaining the relief sought by said bill, and prays that they may be expunged with costs, to wit:

First exception. For that said bill is impertenant from and after the word "effect" in the third line of the third paragraph of said bill to the end of said paragraph.

Second exception. For that said bill is impertenent from and after the word "same" in the fourth line of the eighth paragraph of said bill to the end of said paragraph.

Third exception. For that said bill is impertenent in the thirteenth paragraph in this, that it contains the words "and maintained" in the 11th line; also that it contains the words "or maintained" in the 33rd line; also that it contains the words "or maintained" in the 40th line.

A. L. FRAZER,
Solicitor for Deft.

(Endorsed:) Filed Sept. 12, 1889. R. H. Lamson, clerk.

21 And afterwards, to wit, on the 12th day of Sept., 1889, there was duly filed in said court, an appearance, in words and figures as follows, to wit:

22 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
JAMES K. KELLY. } No. 1630.

To the clerk of the above entitled court:

You will please enter my appearance as solicitor in the above entitled cause for myself.

JAMES K. KELLY,
Defendant.

(Indorsed:) No. 1630. In the circuit court of the United States for the district of Oregon. The United States *vs.* James K. Kelly. Præcipe for appearance of defendant. Filed and entered Sept. 12, 1889. R. H. Lamson, clerk. By D. W. Stevens, deputy.

23 And afterwards, to wit, on Tuesday, the 15th day of Oct., 1889, the same being the 8th judicial day of the regular October term of said court; present: the honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in said case, to wit:

24 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
JAMES K. KELLY. } No. 1630.

OCTOBER 15, 1889.

Now, at this day, this cause is submitted to the court upon the exceptions to the bill, the plaintiff appearing by Mr. Lewis L. McArthur, United States attorney, and the defendant appearing in person.

33 UNITED STATES OF AMERICA,
District of Oregon, ss:

To James K. Kelly, greeting:

Whereas the United States has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon, in your favor, you are, therefore, hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October, A. D. eighteen hundred and ninety, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this September 19, 1890.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Attest:

[SEAL.]

R. H. LAMSON, *Clerk.*
By MAURICE MCKIM,
Deputy Clerk.

34 *Return of civil process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 22 day of September, 1890, at Portland, Multnomah County, in said district, I duly served the within citation on appeal upon the therein named James K. Kelly, by delivering to C. B. Bellenger personally, his attorney of record, a true copy of said citation on appeal duly certified to by me as U. S. marshal.

L. T. BARIN,
United States Marshal.
By O. P. MILLER,
Deputy.

35 UNITED STATES OF AMERICA,
District of Oregon, ss:

To James K. Kelly, greeting:

Whereas the United States have lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon, in your favor, you are, therefore, hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. eighteen hundred and ninety, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this September 19, 1890.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Attest:

[SEAL.]

R. H. LAMSON, *Clerk.*
By MAURICE MCKIM,
Deputy Clerk.

(Indorsed:) No. 1630. U. S. circuit court, district of Oregon. The United States vs. James K. Kelly, citation on appeal. Filed Sept. 24, 1890. R. H. Lamson, clerk, by Maurice McKim, deputy clerk. Serve C. B. Bellinger.

36 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify that the writing hereto attached is a true and complete transcript of the record and proceedings in cause No. 1630 of the United States, against James K. Kelly, as fully as the same appear of record and on file in my office and in my custody.

Witness my hand and the seal of the said court, affixed at Portland, in said district, September 25, 1890.

R. H. LAMSON, *Clerk.*
By MAURICE MCKIM,
Deputy Clerk.

37 (Indorsement on cover:) No. 1444. The United States, appellant, vs. James K. Kelly. Oregon. C. C. U. S. Filed October 17, 1890. Supreme Court U. S., clerk's office. Received October 17, 1890.